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Clerk  
District Court

NOV 21 2012

for the Northern Mariana Islands  
By \_\_\_\_\_  
(Deputy Clerk)

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN MARIANA ISLANDS**

AUGUST HEALTHCARE GROUP, LLC *dba*  
SAINT MICHAEL'S MEDICAL RESPONSE,

Plaintiff,

v.

THOMAS M. MANGLONA, individually and in his  
personal capacity as Fire Chief of the Department of  
Public Safety, MICHAEL MANIBUSAN TAKAI,  
JOHN BENEDICT TAISAKAN PELISAMEN,  
MARIANAS GLOBAL VENTURES, LLC *dba*  
PRIORITY CARE, JOAQUIN CAMACHO  
MANGLONA, and JOHN DOES 1-10,

Defendants.

Case 1:12-CV-00008

**MEMORANDUM OPINION AND  
ORDER GRANTING IN PART and  
DENYING IN PART DEFENDANTS'  
MOTION TO DISMISS**

**I. INTRODUCTION**

August Healthcare Group, LLC *dba* St. Michael's Medical Response ("St. Michael's") brings this action against Thomas M. Manglona ("Tom"), Joaquin C. Manglona ("Jack"), Marianas Global Ventures, LLC *dba* Priority Care ("Priority Care"), and two former St. Michael's employees, John T. Pelisamen and Michael M. Takai, for alleged violations of its civil rights under 42 U.S.C. § 1983 and various state tort and contract claims. (First Amended Complaint, ECF No. 26 at 1-2.) St. Michael's alleges that Tom conspired with his cousin, Jack, to illegally compete with St. Michael's patient transportation services. (*Id.*)

Presently before the Court is Priority Care Defendants' Motion to Dismiss First Amended Complaint. (ECF No. 35, hereafter, "Motion.") After considering the relevant filings, the evidence

1 presented. and the oral arguments presented by counsel for the parties on November 15, 2012, the  
2 Court finds that the allegation of conspiracy under 42 U.S.C. § 1983 as to Tom Manglona, Jack  
3 Manglona and Priority Care is sufficient to withstand the Motion. However, St. Michael's has failed  
4 to allege a sufficient nexus tying Defendants Pelisamen and Takai to the conspiracy and therefore,  
5 the constitutional claims. Accordingly, Defendants Pelisamen and Takai will be dismissed from the  
6 First Amended Complaint without prejudice.

## 7 8 **II. BACKGROUND**

9 In a First Amended Complaint filed on July 24, 2012 (hereafter, "FAC"), St. Michael's  
10 alleges that Tom conspired with his cousin, Jack, to illegally bring down St. Michael's in order to  
11 establish his own competing patient transportation services or ambulance company called Priority  
12 Care. (*Id.* ¶ 2.) Jack is a member and registered agent of Priority Care, a limited liability company.  
13 (*Id.* ¶¶ 7, 96.) Tom violated St. Michael's rights by exceeding his statutory and regulatory authority  
14 as the Emergency Medical Services ("EMS") Coordinator, Acting Fire Chief, and Fire Chief of the  
15 Department of Public Safety ("DPS") Fire Division of the Commonwealth of the Northern Mariana  
16 Islands ("CNMI") by (1) interfering with St. Michael's business licenses; (2) providing materially  
17 false information regarding CNMI statutes and regulations to companies overseeing St. Michael's  
18 Medicare compliance; (3) requiring CNMI certifications that did not and still do not exist; and (4)  
19 treating other private ambulance companies and government ambulances differently. (FAC at 2.)  
20 The remaining defendants conspired with Tom to harm St. Michael's business by (1) violating their  
21 contractual agreements not to compete; (2) violating their contractual agreements not to solicit; (3)  
22 interfering with St. Michael's contracts; (4) stealing proprietary information; and (5) stealing  
23

1 confidential patient medical records. (*Id.* ¶ 2.)

2 On the basis of the allegations outlined above, Plaintiff brings eleven causes of action against  
 3 Defendants. The first eight causes of action allege direct constitutional violations against Tom  
 4 Manglona and conspiracy to violate those rights against all Defendants pursuant to 42 § 1983: (1)  
 5 Violation of Due Process – Licenses; (2) Conspiracy to Deprive St. Michael’s of Due Process –  
 6 Licenses; (3) Violation of Due Process – Provider Transaction Access Number (“PTAN”); (4)  
 7 Conspiracy to Deprive St. Michael’s of Due Process – PTAN; (5) Violation of Due Process –  
 8 Malicious Prosecution; (6) Conspiracy to Deprive St. Michael’s of Due Process – Malicious  
 9 Prosecution; (7) Violation of Equal Protection; and (8) Conspiracy to Violate St. Michael’s  
 10 Guarantee of Equal Protection. The remaining causes of action are: (9) Breach of Contract against  
 11 Takai and Pelisamen; (10) Tortious Interference with Existing Contract against Priority Care; and  
 12 (11) Conspiracy and Concert of Action for Tortious Interference against all Defendants except Tom.

13 St. Michael’s also repeats its request for a preliminary injunction restricting Defendants’  
 14 actions.<sup>1</sup> (FAC ¶¶ 202–210.) On October 12, 2012, the Court issued a Memorandum Opinion and  
 15 Order Denying Plaintiff’s Motion for Preliminary Injunction. (ECF No. 44.) Therefore, preliminary  
 16 injunction is not at issue in this motion.

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20 <sup>1</sup> St. Michael’s requests an order to continue until the final determination of the case, restraining: (1) Tom from  
 21 investigating and harassing St. Michael’s business and business relationships; (2) Pelisamen from working for Priority  
 22 Care; (3) Pelisamen from soliciting St. Michael’s customers; (4) Takai from working for Priority Care; (5) Takai from  
 23 soliciting St. Michael’s customers; (6) Priority Care from soliciting St. Michael’s patients; (7) Priority Care from  
 24 transporting and collecting fees from current and former St. Michael’s customers; (8) Jack from contacting or soliciting  
 St. Michael’s current customers; and (9) Jack from offering kickbacks, bribes or gratuities, however described, to current  
 and former customers of St. Michael’s.

1 **III. JURISDICTION**

2 This Court has subject matter jurisdiction over this action under 28 U.S.C. § 1331, as the case  
3 in controversy involves federal questions, and supplemental jurisdiction over the state claims under  
4 28 U.S.C. § 1367.

5 **IV. STANDARDS**

6 **A. RULE 12(B)(1) JURISDICTION**

7 On a Rule 12(b)(1) motion to dismiss, the court presumes it lacks subject matter jurisdiction  
8 until the plaintiff can prove otherwise. *See Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375,  
9 377 (1994) (“It is to be presumed that a cause lies outside [the court’s] limited jurisdiction, and the  
10 burden of establishing the contrary rests upon the party asserting jurisdiction.”); *see also Thornhill*  
11 *Publ’g v. General Tel. & Elecs. Corp.*, 594 F.2d 730, 733 (9th Cir.1979) (“[P]laintiff will have the  
12 burden of proof that jurisdiction does in fact exist”).

13 **B. RULE 12(B)(6) FAILURE TO STATE A CLAIM**

14 A complaint must contain “a short and plain statement of the claim showing that the pleader  
15 is entitled to relief.” Fed. R. Civ. P. 8(a)(2). A motion to dismiss pursuant to Rule 12(b)(6) of the  
16 Federal Rules of Civil Procedure tests the legal sufficiency of the claims asserted in the complaint.  
17 Fed. R. Civ. P. 12(b)(6); *Navarro v. Block*, 250 F.3d 729, 731 (9th Cir. 2001). The court only  
18 reviews the contents of the complaint, accepting all factual allegations as true, and drawing all  
19 reasonable inferences in favor of the nonmoving party. *Knievel v. ESPN*, 393 F.3d 1068, 1072 (9th  
20 Cir. 2005). Notwithstanding this deference, the court need not accept “legal conclusions” as true.  
21 *Ashcroft v. Iqbal*, 556 U.S. 662 (2009). Moreover, it is improper for a court to assume “the  
22  
23  
24

1 [plaintiff] can prove facts that [he or she] has not alleged.” *Assoc. Gen. Contractors of Cal., Inc. v.*  
2 *Cal. State Council of Carpenters*, 459 U.S. 519, 526 (1983).

## 3 4 V. DISCUSSION

### 5 A. SECTION 1985 CONSPIRACY

6  
7 Defendants initially argued in the Motion that the FAC should be dismissed because St.  
8 Michael’s failed to allege all the elements of a conspiracy under § 1985.<sup>2</sup> (Mot. at 2–3.) Both §  
9 1983 and § 1985(3) do not create independent substantive rights; they are procedural statutes which  
10 provide a remedy for deprivation of existing rights. *Great Am. Fed. Sav. & Loan v. Novetny*, 442  
11 U.S. 366, 372, 376 (1979); *Chapman v. Houston Welfare Rights Org.*, 441 U.S. 600, 617-618  
12 (1979). A § 1985 claim is grounded in the Thirteenth Amendment, while a § 1983 claim is  
13 grounded in the Fourth or Fourteenth Amendments. *Id.*

14 St. Michael’s contends, and Defendants later conceded at the November 15, 2012 hearing  
15 (the “Hearing”), that St. Michael’s never made a § 1985 claim and therefore that section is irrelevant  
16 to the discussion here. A review of the FAC reveals that St. Michael’s § 1983 claims are grounded  
17 in the Fourteenth Amendment rather than the Thirteenth Amendment. Accordingly, the Court  
18 continues the discussion with respect to the § 1983 conspiracy only.

19  
20 <sup>2</sup> To state a claim under 42 U.S.C. § 1985(3), a plaintiff must allege: (1) a conspiracy involving two or more  
21 persons; (2) for the purpose of depriving, directly or indirectly, a person or class of persons of the equal  
22 protection of the laws; and (3) an act in furtherance of the conspiracy; (4) which causes injury to a person or  
23 property, or a deprivation of any right or privilege of a citizen of the United States. *Griffin v. Breckinbridge*,  
24 403 U.S. 88, 102–3 (1971).



1 Here, St. Michael's has alleged an agreement between Jack Manglona and state actor Tom  
2 Manglona to "run St. Michael's out of business." (Opp'n at 14; FAC ¶ 98.) Jack is alleged to  
3 represent Priority Care as one of its members and registered agent. (FAC ¶¶ 7, 96.) Therefore,  
4 there is a clear allegation of a meeting of the minds between Tom and Jack, and through Jack,  
5 Priority Care.

6 St. Michael's goes on in the FAC to allege that "[u]pon information and belief," Jack  
7 Manglona was referring to himself, Tom Manglona, Takai, and Pelisamen as the people who were  
8 going to "run St. Michael's out of business." (FAC ¶ 99.) Also, by asserting that "there are  
9 allegations that Jack Manglona acted as an agent for Priority Care (Opp'n at 14; *see also* FAC ¶  
10 103), St. Michael's appears to be inferring that his meeting of the minds with Tom Manglona to "run  
11 St. Michael's out of business" should be imputed to Pelisamen and Takai because they worked for  
12 Priority Care after ending their positions with St. Michael's.

13 However, nowhere in the FAC does St. Michael's allege that either Pelisamen or Takai  
14 entered into an express or implied agreement with Tom Manglona. St. Michael's asserts that there  
15 are sufficient concrete facts alleged to infer a conspiracy. (Opp'n at 14.) However, it stops short of  
16 indicating what these facts are or pointing the Court to the specific allegations in the FAC. At the  
17 Hearing, St. Michael's counsel admitted that there was no express agreement between Pelisamen and  
18 Takai and Tom, but contended that once Pelisamen and Takai breached their covenant not to  
19 compete, they automatically entered into the conspiracy.

20 A thorough reading of the FAC does not reveal any clear indication that Pelisamen or Takai  
21 had a meeting of the minds with Tom Manglona to deprive St. Michael's of its constitutional rights.  
22  
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24

1 The Court is not satisfied that merely breaching their covenant not to compete, if proven, is  
2 sufficient to show a “common objective” of illegally interfering with St. Michael’s business.

3 Accordingly, the Court finds that St. Michael’s has sufficiently alleged a conspiracy between  
4 Tom Manglona and Jack Manglona/Priority Care, but not between the remaining Defendants Takai  
5 or Pelisamen. For this reason, Defendants Takai and Pelisamen’s motion to dismiss the conspiracy  
6 claims is GRANTED.

## 7 **2. Deprivation of Rights**

### 8 a. Due Process – Interference with Business License

9 St. Michael’s first claims that it has a clearly defined property right to its CNMI license and  
10 the right to operate its business without unwarranted and unlawful governmental interference.  
11 (Opp’n at 15.) Tom Manglona and, through the conspiracy, the Priority Care Defendants interfered  
12 with those rights. (*Id.*) Defendants contend that St. Michael’s has failed to allege any facts showing  
13 that it was denied a business license or that its business license was revoked. (Reply at 2.) This is in  
14 light of St. Michael’s claim in the FAC that it was at all times relevant to the complaint a fully  
15 licensed and certified ambulance company. (FAC ¶¶ 3, 12–13.)

16 “[T]he revocation or removal of a license or certificate that is essential in the pursuit of a  
17 livelihood requires procedural due process under the Fourteenth Amendment.” *Stidham v. Peace*  
18 *Officer Stds. & Training*, 265 F.3d 1144, 1150 (10th Cir. 2001). St. Michael’s alleges that Tom  
19 Manglona’s actions were designed to deny St. Michael’s the ability to conduct its rightfully licensed  
20 business and interfere with St. Michael’s ability to provide services to its clients. (Opp’n at 15–16;  
21 FAC 33–90, 141, 148.)

1           Indeed. St. Michael's does not allege that its business license was ever revoked. It does,  
2 however. claim that Defendants conspired to run St. Michael's out of business. (Opp'n at 14–15.)  
3 Interference with business operations can be a due process violation under § 1983. In the Ninth  
4 Circuit case *A & A Concrete, Inc. v. White Mountain Apache Tribe*, plaintiffs alleged that the sheriff  
5 conspired with private parties to put the plaintiffs (a cement company) out of business by serving  
6 summonses, complaints, and garnishments that the defendants knew to be invalid. 676 F.2d 1330,  
7 1332-33 (9th Cir. 1982). The Ninth Circuit deemed this to be valid claim under § 1983. *Id.* In the  
8 Eleventh Circuit case *Espanola Way Corp. v. Meyerson*, the court found that plaintiff had a due  
9 process cause of action under § 1983 where the plaintiff alleged issuance of “344 building code  
10 violations . . . as well as numerous fire violations,” all of which were unfounded and issued “to  
11 harass and drive [the plaintiff's h]otel out of business.” 690 F.2d 827, 828 (11th Cir. 1982).

12           In both of the above cases, there was no requirement that the plaintiffs were *actually* driven  
13 out of business. Further, defendants in those cases did not interfere with plaintiffs' business licenses,  
14 but rather the operation of their businesses. Similarly, St. Michael's has claimed that Defendants  
15 have taken action to run St. Michael's out of business. There are allegations that Defendant Tom  
16 Manglona interfered with St. Michael's PTAN by drafting a letter that was eventually sent to  
17 Palmetto GBA (the Medicare contractor responsible for paying St. Michael's claims; hereafter,  
18 “Palmetto”) informing Palmetto that St. Michael's was “not licensed or certified in the CNMI” as an  
19 ambulance service. (FAC ¶ 67.) This resulted in the revocation of St. Michael's PTAN. (FAC ¶  
20 66.) Further, St. Michael's alleges that Defendants interfered with St. Michael's vehicle registration.  
21 (FAC ¶¶ 33–51, 82, 124, 128.) These actions, if proven, obstruct St. Michael's ability to conduct  
22 business.

1 Accordingly, St. Michael's has sufficiently alleged a § 1983 claim for governmental  
2 interference with its business operations.

3 b. Due Process – Provider Transaction Access Number (PTAN)

4 Next, St. Michael's argues that it had a clearly defined property right to its PTAN, and that  
5 Defendants interfered with that right. (Opp'n at 16.)

6 St. Michael's was issued a PTAN by Medicare and received payment from Palmetto. (FAC  
7 ¶¶ 28, 65.) In November 2010, after performing an investigation that was prompted by a letter that  
8 Tom allegedly drafted and later receiving information from Tom that "St. Michael's was not  
9 licensed in the CNMI," Palmetto revoked St. Michael's PTAN. (FAC ¶¶ 65–69.)

10 St. Michael's alleges that Tom Manglona's false information to Palmetto that St. Michael's  
11 lacked proper certification and licenses violated St. Michael's due process rights. (FAC 68–69.) St.  
12 Michael's further alleges that Tom Manglona secretly complained to Palmetto knowing that St.  
13 Michael's would likely lose its PTAN number. (Opp'n at 17.) The loss of St. Michael's PTAN  
14 number was "caused" by Tom's wrongful acts, thus making him and other Defendants liable. (*Id.*)

15 Defendants argue that any interference was caused by the letter from Commissioner Tudela  
16 that was sent to Palmetto and not by Tom Manglona himself. (Reply at 3.) This argument is  
17 tenuous at best because the FAC clearly states that Palmetto's investigator, Norm Seigel, spoke on  
18 the phone with a CNMI official believed to be Tom Manglona, who informed him that St. Michael's  
19 was not licensed in the CNMI. (FAC ¶¶ 65–69.) Thus, even without the letter, there are allegations  
20 of direct interference with St. Michael's PTAN eligibility by Tom Manglona.



1 Michael's PTAN was revoked. (FAC ¶¶ 65, 66, 100.) Both companies are similarly situated in that  
2 they are both private companies, offering non-emergency medical transport services and use  
3 ambulances with blue lights. St. Michael's alleges that it was treated differently from Priority Care  
4 in that Defendants interfered with St. Michael's, but not Priority Care's, vehicle registration and  
5 Medicare account eligibility. Accordingly, St. Michael's has alleged sufficient facts for the "class of  
6 one" equal protection claim.

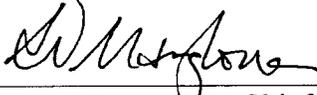
7 **D. SUBJECT MATTER JURISDICTION**

8 Defendants contend that upon dismissal of the 1983 conspiracy allegation, the Court should  
9 dismiss the case for lack of subject matter jurisdiction. (Mot. at 10.) Here, since the 1983  
10 conspiracy allegation survives at least against Tom and Jack Manglona, the Court will retain  
11 supplemental jurisdiction as to the remaining claims pursuant to 28 U.S.C. § 1367. However, since  
12 St. Michael's has failed to allege a sufficient nexus to tie Pelisamen and Takai to the conspiracy and  
13 therefore the federal claims, the Court will dismiss Pelisamen and Takai from those claims and  
14 decline to exercise supplemental jurisdiction over the remaining state law claims against them.

15 **VI. CONCLUSION**

16 For the foregoing reasons, Defendants' Motion to Dismiss the First Amended Complaint  
17 with respect to Defendants Tom Manglona, Jack Manglona, and Priority Care is DENIED, and with  
18 respect to Defendants Pelisamen and Takai is GRANTED for the second, fourth, sixth, eighth, ninth,  
19 and eleventh causes of action. Defendants Pelisamen and Takai are dismissed without prejudice.

20 IT IS SO ORDERED this 21<sup>st</sup> day of November, 2012.

21  
22   
23 RAMONA V. MANGLONA, Chief Judge